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10/576,055	03/31/2008	Satoru Tanaka	U 016264-0	2138

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 April 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date *04/18/2006*.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☒ Other: *foreign patent*.

DETAILED ACTION

1.   This application has been examined. Claims 1-24 are pending.

2.   The examiner notes that the foreign priority for this application is <u>not</u> granted due to the deadline for filing of the national stage exceeding 30 months from the priority date. See MPEP 1842.VI and PCT Article 22(1). Also see MPEP 1893.03(b).

Information Disclosure Statement

3.   The information disclosure statement (IDS) submitted on 4/18/2006 is being considered by the examiner.

Claim Objections

4.   Claims 9, 17, and 18 are objected to because of the following informalities:

Claim 9 lines 5-6 recites "said signal distribution requests", examiner suggests "said requests for distribution of signals"

Claim 17 line 3 recites "the number of signals", examiner suggests "a number of signals" to correct for antecedent basis.

Claim 18 lines 3-4 recites "said transmitted signals", examiner suggests "said signals transmitted" or "the signals transmitted"

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6.   Claims 5, 13, 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 5, claim 5 lines 7 and 8 recite the phrase "said assigned space" which is confusing and renders the claim indefinite. It is unclear whether the "said assigned space" is the "free space" that has been assigned or just to hold a space for the reserved number in the assigned free space. Clarify.

Re claim 13, claim 13 line 5 recites the limitation "said assigned space". There is insufficient antecedent basis for this limitation in the claim.

Re claim 17, claim 17 lines 7 and 9 recite "said signals" which is confusing and renders the claim indefinite. It is unclear whether the "said signals" are the number of signals transmitted from one communications network or some other type of signal. Clarify.

Re claim 18, claim 18 lines 6, 11 and 13 recite "said signals" which is confusing and renders the claim indefinite. It is unclear whether the "said signals" are the number of signals transmitted from one communications network or some other type of signal. Clarify.

Re claim 19, claim 19 lines 3, 5, 7, 10, 12 and 14 recite "said signals" which is

confusing and renders the claim indefinite. It is unclear whether the "said signals" are

the number of signals transmitted from one communications network or some other type

of signal. Clarify.

Re claim 20, claim 20 line 3 recites "said signals" which is confusing and renders

the claim indefinite. It is unclear whether the "said signals" are the number of signals

transmitted from one communications network or some other type of signal. Clarify.

Re claim 21, claim 21 lines 5 and 6 recite "said signals" which is confusing and

renders the claim indefinite. It is unclear whether the "said signals" are the number of

signals transmitted from one communications network or some other type of signal.

Clarify.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

8.   Claims 1-24 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter

Re claims 1-8, claims 1-8 are directed towards a method and merely disclose

abstract ideas which can be performed in non-tangible embodiments. For a method

claim to satisfy the 35 USC §101, it must (1) be tied to another statutory class or (2)

transform the underlying subject matter. A process comprising a series of steps not

limited to machine executable or tied to a statutory class does not fall in any statutory

categories of invention (i.e., Machine, Manufacture, Composition of Mater, and Process)

as it may be performed by other means.

Re claims 9-16, claims 9-16 are directed to an apparatus, it can reasonably be

interpreted that the apparatus as disclosed includes nothing more than sets of software

instructions or software elements which merely offers a program that uses primitives

and protocol to schedule the transmission of data. The distribution of signals is non-

statutory subject matter.

Re claims 17-24, claims 17-24 are directed to the program itself, and not to a

machine, manufacture, process, or composition of matter. Therefore, the claims fail to

fall within a statutory category.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10.   Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka

et al. (EP 1715634) herein after referred to as Tanaka.

Re claim 1, Tanaka discloses a distribution request management method, characterized in that:

a maximum number of distributable requests is set arbitrarily for requests from one communication network to one or plural contents providing servers provided on another communication network, said requests being made for distribution of signals including data of contents; and a request management means for managing said requests sends said signal distribution requests to said contents providing servers as long as the number of said requests is within a range not larger than said maximum number (see [column3 lines 3-13]).

Re claim 2, Tanaka discloses a distribution request management method characterized in that a reserved number is set arbitrarily within a range not larger than said maximum number, and a space for requests for distribution of signals including data of each of one or plural specific contents is held to correspond to said reserved number (see [column3 lines 14-20]).

Re claim 3, Tanaka discloses a distribution request management method characterized in that an upper limit reserved number not smaller than said reserved number is set arbitrarily within a range not larger than said maximum number for each of said specific contents, and requests for distribution of signals including data of said specific contents, the number of which requests is larger than said reserved number

and not larger than said upper limit reserved number, are sent to said contents

providing servers as long as the number of said signal distribution requests is within a

range of a number obtained by subtracting said reserved numbers assigned for said

specific contents from said maximum number (see [column3 lines 21-33]).

Re claim 4, Tanaka discloses a distribution request management method,

characterized in that for contents for which said upper limit reserved number is set at 0,

said signal distribution requests are not sent to said contents providing servers (see

[column3 lines 34-38]).

Re claim 5, Tanaka discloses a distribution request management method,

characterized in that:

when said request management means concludes that reservation start

conditions are satisfied for requests for distribution of signals including data of one of

said specific contents, said request management means assigns a free space to said

requests so as to hold a space corresponding to said set reserved number till said

assigned space reaches said reserved number as long as said assigned space is within

a range of a number obtained by subtracting said reserved numbers assigned for said

specific contents from said maximum number (see [column3 lines 39-50]).

Re claim 6, Tanaka discloses a distribution request management method,

characterized in that:

when said request management means concludes that reservation termination

conditions are satisfied for requests for distribution of signals including data of one of

said specific contents, said request management means releases said held space

corresponding to said reserved number (see [column3 lines 51-57]).

Re claim 7, Tanaka discloses a distribution request management method,

characterized in that:

when a request management means for managing requests which are made

from one communication network to a contents providing server provided on another

communication network and for distribution of signals including data of contents in a

streaming format concludes that a signal including data of a specific one of said

contents requested by said signal distribution requests is a signal out of a arbitrarily

defined bandwidth range, said request management means prevents distribution of said

signal including data of said specific one of said contents (see [column4 lines 1-11]).

Re claim 8, Tanaka discloses a distribution request management method,

characterized in that said one communication network is a mobile communication

network performing wireless communication with mobile terminal devices (see [column4

lines 12-16]).

Re claim 9, Tanaka discloses a distribution request management apparatus

provided on a communication network between one communication network and

another communication network, characterized by carrying out a process in which requests for distribution of signals including data of contents are sent from said one communication network to a contents providing server provided on said another communication network as long as the number of said signal distribution requests is within a range not larger than a maximum number of distributable requests set arbitrarily (see [column4 lines 17-27]).

Re claim 10, Tanaka discloses a distribution request management apparatus, characterized by carrying out a process in which a space for requests for distribution of signals including data of each of one or plural specific contents is held to correspond to a reserved number set arbitrarily within a range not larger than said maximum number (see [column4 lines 28-34]).

Re claim 11, Tanaka discloses a distribution request management apparatus, characterized by carrying out a process in which when it is concluded the number of requests for distribution of signals including data of each of said specific contents is larger than said reserved number and not larger than an upper limit reserved number set arbitrarily within a range not smaller than said reserved number, said signal distribution requests are sent to said contents providing server as long as the number of said requests is within a range of a number obtained by subtracting said reserved numbers assigned for said specific contents from said maximum number (see [column4 lines 35-47]).

Re claim 12, Tanaka discloses a distribution request management apparatus, characterized by carrying out a process in which when it is concluded that said upper limit reserved number for a specific one of said contents is set at 0, said signal distribution requests including data of said specific one of said contents are not sent (see [column4 lines 48-53]).

Re claim 13, Tanaka discloses a distribution request management apparatus, characterized by carrying out a process in which when it is concluded that reservation start conditions are satisfied for requests for distribution of signals including data of one of said specific contents, a free space is assigned to said requests so as to secure a space corresponding to said set reserved number till said assigned space reaches said reserved number as long as said assigned space is within a range of a number obtained by subtracting said reserved numbers assigned for said specific contents from said maximum number (see [column5 lines 1-6]).

Re claim 14, Tanaka discloses a distribution request management apparatus, characterized by carrying out a process in which when it is concluded that reservation termination conditions are satisfied for requests for distribution of signals including data of one of said specific contents, said held space corresponding to said reserved number is released (see [column5 lines 7-13]).

Re claim 15, Tanaka discloses a distribution request management apparatus

provided on a communication network between one communication network and

another communication network, characterized by carrying out a process in which:

when it is concluded that a signal including data of contents in a streaming format and

requested by a distribution request from a processing apparatus on said one

communication network is a signal out of a arbitrarily defined bandwidth range, said

signal including data of said contents is not distributed from a contents distribution

apparatus on said another communication network to said one communication network

(see [column5 lines 14-25]).

Re claim 16, Tanaka discloses a distribution request management apparatus,

characterized in that said one communication network is a mobile communication

network performing wireless communication with mobile terminal devices (see [column8

lines 24-34]).

Re claim 17, Tanaka discloses a program of a distribution request management

method, characterized by making a computer execute the processes of: determining

whether the number of signals transmitted from one communication network and

including instructions of requests to distribute signals including data of contents is a

number within a range not larger than a maximum number of distributable signals set

arbitrarily, or not; and sending said signals including said request instructions to a

contents providing server provided on another communication network when it is

concluded that said number of said signals is a number within a range not larger than said maximum number of distributable signals (see [column5 lines 26-38]) .

Re claim 18, Tanaka discloses a program of a distribution request management method, characterized by further making said computer execute the processes of: determining whether said distribution request instructions included in said transmitted signals are instructions of requests to distribute signals including data of a specific one of said contents or not; determining whether the number of said signals is a number within a range not larger than a reserved number set arbitrarily for said specific one of said contents when it is concluded that said distribution request instructions included in said transmitted signals are instructions of requests to distribute signals including data of said specific one of said contents; and transmitting said signals including said request instructions to said contents providing server provided on said another communication network when it is concluded that the number of said signals is a number within a range not larger than said reserved number (see [column5 lines 39-56]).

Re claim 19, Tanaka discloses a program of a distribution request management method, characterized by further making said computer execute the processes of: determining whether the number of said signals is a number within a range not larger than an upper limit reserved number set to be not smaller than said reserved number, or not, when it is concluded that the number of said signals is not a number within a range not larger than said reserved number; determining whether the number of said signals is

a number within a range not larger than a remaining number obtained by subtracting

reserved numbers assigned to specific ones of said contents from said maximum

number of distributable signals, or not, when it is concluded that the number of said

signals is a number within a range not larger than said upper limit reserved number;

and transmitting said signals including said request instructions to said contents

providing server provided on said another communication network when it is concluded

that the number of said signals is a number within a range not larger than said

remaining number (see [column6 lines 4-23]).

Re claim 20, Tanaka discloses a program of a distribution request management

method, characterized by further making said computer execute the process of:

preventing said signals including said request instructions from being transmitted to said

contents providing server provided on said another communication network when it is

concluded that said upper limit reserved number is set at 0 for said signals including

said instructions of requests to distribute signals including data of said specific one of

said contents (see [column6 lines 24-33]).

Re claim 21, Tanaka discloses a program of a distribution request management

method, characterized in that: if it is concluded that reservation start conditions are

satisfied for requests for distribution of signals including data of a specific one of said

contents, said computer is made to execute said process of transmitting said signals

including said request instructions to said contents providing server till the number of

said signals reaches said set reserved number only when it is concluded that said

instructions are instructions of requests for distribution of signals including data of said

specific one of said contents (see [column6 lines 34-44]).

     Re claim 22, Tanaka discloses a program of a distribution request management

method, characterized in that: if it is concluded that reservation termination conditions

are satisfied for requests for distribution of signals including data of a specific one of

said contents, said computer is prevented from carrying out said process of determining

whether said instructions are instructions of requests for distribution of signals including

data of said specific one of said contents (see [column6 lines 45-53]).

     Re claim 23, Tanaka discloses a program of a distribution request management

method, characterized in that: when it is concluded that a signal including data of a

specific one of contents in a streaming format and requested by a distribution request

from one communication network to a contents providing server provided on another

communication network is a signal out of a arbitrarily defined bandwidth range, a

computer is made to carry out the process of preventing signal distribution including

data of said specific one of contents (see [column6 lines 54-58]-[column7 lines 1-5]).

     Re claim 24, Tanaka discloses a program of a distribution request management

method, characterized in that said one communication network is a mobile

communication network performing wireless communication with mobile terminal

devices (see [column7 lines 6-10]).

Conclusion

11.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to DAVID YI whose telephone number is (571)270-7519.

The examiner can normally be reached on Mon-Fri 7:30am-5pm, Alternating Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jinhee Lee can be reached on 571-272-1977. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

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/Jinhee J Lee/
Supervisory Patent Examiner, Art
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/D.Y./